Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-164

PASADENA CITY BOARD OF EDUCATION, *et al.*,

Petitioners,

v.

NANCY ANNE SPANGLER, *et al.*,

Respondents,

and

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF *AMICUS CURIAE* OF THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

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BRIEF *AMICUS CURIAE* OF THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Interest of *Amicus**

The N.A.A.C.P. Legal Defense and Educational Fund, Inc., is a non-profit corporation, incorporated under the laws of the State of New York to assist blacks to secure their constitutional rights through the courts. Its charter declares that its purposes include rendering legal aid

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* Letters of Consent from counsel for the petitioners and respondents in this case have been filed with the clerk of the Court.

gratuitously to blacks suffering injustice by reason of race who are unable, on account of poverty, to employ legal counsel on their own behalf. The charter was approved by a New York court, authorizing the organization to serve as a legal aid society. The N.A.A.C.P. Legal Defense Fund, Inc., is independent of other organizations and is supported by contributions from the public. For many years its attorneys have represented parties in this Court and the lower courts, and it has participated as *amicus curiae* in this Court and other courts.

Attorneys from the N.A.A.C.P. Legal Defense and Educational Fund, Inc. litigated before this Court the landmark case of *Brown* v. *Board of Education*, 347 U.S. 483 (1954) which declared unconstitutional state-imposed segregation of the races in public education. Since *Brown*, its attorneys have been actively involved in litigation designed to ensure that the mandate of that decision was properly and effectively implemented by lower federal courts. In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), a case also handled by Legal Defense Fund attorneys, this Court attempted to provide guidance to lower federal courts and school boards with respect to the nature and degree of desegregation required by *Brown*, nearly seventeen years after that decision became the law of the land.[1] It was clearly this Court's hope that segregated school systems would proceed with the job of converting to unitary status. Thereafter, federal courts could turn their limited resources to other important

[1] Between *Brown* and *Swann*, Legal Defense Fund attorneys argued the following desegregation cases, among others, before this Court: *Brown* v. *Board of Education*, 349 U.S. 294 (1955); *Cooper* v. *Aaron*, 358 U.S. 1 (1958); *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964); *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968); and *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969).

matters, leaving school boards with full authority to manage their educational programs free of judicial intervention or supervision.

In this litigation, the Court is faced for the first time with the task of construing language in *Swann* relating to the circumstances under which federal court jurisdiction over a desegregation case may appropriately be ended. In that regard, *Swann* stated

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in Brown I. The systems would then be "unitary" in the sense required by our decisions in Green and Alexander.
>
> It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary. 402 U.S. 1, at 31-32.

Based upon the extensive involvement of Fund attorneys in school desegregation cases over the years, we submit that this Court's decision in *Swann* has been a significant, positive force in increasing the pace and improving the

quality of efforts to dismantle dual systems of public education. But, meaningful changes brought about by *Swann* did not happen overnight. Since 1971, lower federal courts, with few exceptions, have been required to exercise close and continuing supervision of various systems to ensure that acceptable desegregation plans would be devised and effectively implemented.

In some situations, many of which are handled by Legal Defense Fund attorneys, court supervision is still necessary. This brief is being filed to bring to the Court's attention considerations which warrant application of a realistic standard for determining whether lower federal courts have properly decided to retain jurisdiction over desegregation cases.

Argument

Almost seventeen years passed after *Brown* before extensive compliance got underway. Given this history of resistance it is not surprising that court efforts to secure compliance with *Swann* have encountered more than a little difficulty. In some systems, boards resisted assuming responsibility for devising plans that achieved the "greatest possible degree of desegregation;" other devised plans that appeared on paper to have prospects for eradicating segregation but proved ineffective. Yet others have implemented generally acceptable desegregation plans that have required minor adjustments after implementation to ensure continued effectiveness. In each case, successful desegregation has depended largely upon the extent to which the lower federal courts have faithfully discharged the crucial supervisory roles this Court defined in *Swann*. Where courts have insisted that boards produce desegregation plans that worked and worked realistically "now," and have required boards to make adjustments to avoid foreseeable

resegregation, stable desegregated systems have resulted. Where courts have accepted "paper compliance" and resisted the duty to review how so-called unitary plans operated in practice, unstable, resegregated and dislocated systems have developed. In the former situations, courts have been able to get out of the desegregation business; in the latter, litigation persists. As the Fifth Circuit Court of Appeals pointed out, "one swallow does not make a spring." *Lemon* v. *Bossier Parish School Board,* 444 F.2d 1400, 1401 (5th Cir. 1971): even under the best of circumstances, district courts should observe the operation of a desegregation plan in practice for a few years before declaring a system unitary.[2]

Here, the Pasadena City Board of Education asserts that it has dismantled its dual system and should be freed from further judicial supervision. Alternatively, it argues that continuing supervision does not justify its being prohibited from instituting a new student assignment plan which it regards as educationally superior to one previously approved by court order. The respondents contend that the Pasadena Board has not entirely satisfied the requirements of *Brown* and *Swann* and that the proposed new plan would resegregate, not further desegregate, the Pasadena system. Both the district court and the court of appeals below have agreed that continuing supervision is required and that the Board's new proposal would not advance desegregation. Presented for this Court's reso-

[2] In fact, the Fifth Circuit, after *Swann*, established a circuit-wide rule that district courts should retain jurisdiction of desegregation cases where terminal plans had been implemented for "not less than three school years," during which time affected school boards must file semi-annual reports on such things as pupil and teacher assignments, proposed construction, transportation and student transfers. At the end of the three-year period, dismissal may be granted only after plaintiffs have received notice and the opportunity to be heard. *Youngblood* v. *Board of Public Instruction,* 448 F.2d 770 (5th Cir. 1971).

lution, therefore, is the question of whether the lower courts abused their discretion and acted contrary to *Swann* by determining that continued supervision of the Pasadena system was necessary under the circumstances.

We submit that the Court would be aided in deciding this case by the example of the *Swann* case itself, where active, close, sensitive, yet resolute, lower federal court supervision successfully moved a dual system to the point of stable desegregation, warranting an end to judicial intervention. By assessing the facts which the district court addressed in achieving compliance in *Swann*, this Court may perceive the Pasadena case in a useful perspective.

On May 6, 1971, plaintiffs in *Swann* filed a motion for further relief in the trial court seeking an order 1) requiring the defendant Board to comply with previous desegregation orders and 2) enjoining the Board from proceeding with any school construction, additions, or abandonments without judicial approval. On June 17 and 18, 1971, the district court held hearings with respect to a Board proposal to alter the Charlotte-Mecklenburg desegregation plan (the "Finger Plan") upheld by this Court in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). These "partly formed proposals" involved the following notable changes: 1) closing two formerly black schools; 2) utilizing a formerly high school; 3) reducing the capacity of 15 formerly black elementaries; 4) converting 9 of these 15 elementaries to sixth grade centers; 5) employing "one-way" busing of blacks to formerly all-white schools; 6) increasing the number of vacant classrooms in the system; and 7) increasing the busing times and distances particularly for black children. The Court's response, in its memorandum of June 22, 1971 was:

> [W]hen the plan is studied in depth and its purposes and results emerge through its statistics, it becomes apparent that it seeks to raise issues which were decided two years ago; that it is regressive and unstable in nature and results; that it would retreat from approved arrangements and put the burdens of desegregation primarily upon the black race; that it would unlawfully discriminate against black children; that its methods are discriminatory; and that it should not be approved. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 328 F.Supp. 1346, at 1350 (W.D.N.C. 1971)

The court, noting that "'white flight' was advanced as the chief reason for the board's proposals," concluded that it was not a "serious threat to the public schools of Mecklenburg." *Id.* at 1352. In response, the Board withdrew its proposals and promised to present revised suggestions within a few days. The revised proposals, a "feeder plan," envisioned the closing of one black school (Double Oaks) and the use of two others (Villa Heights and University Park) as sixth grade centers. In its order of June 29, 1971, the court found no valid, non-racial reasons for these proposals. The court decided, however, to allow the Board the option of implementing its feeder plan, as long as Double Oaks was not closed and Villa Heights and University Park were used to capacity, or of continuing to utilize the "Finger Plan." In any event, the court ruled that:

> The defendants are enjoined and restrained from operating any school for any portion of a school year with a predominantly black student body. The movement of children from one place to another within the community and the movement of children into the community are not within the control of the school board. The *assignment* of those children to particular

schools *is* within the total control of the school board. The defendants are therefore restrained from assigning a child to a school or allowing a child to go to a school other than the one he was attending at the start of the school year, if the cumulative result of such assignment in any given period tends substantially to restore or to increase the degree of segregation in either the transferor or the transferee school.[3] 328 F.Supp. at 1349-50.

On an appeal to the Fourth Circuit Court of Appeals of this decision by the Board, the district court was unanimously affirmed, *en banc*. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 453 F.2d 1377 (4th Cir. 1972).

On August 27, 1971, plaintiffs filed a motion for further relief alleging as grounds for court action as follows:

> At the board meeting on April 24, 1971, the board disregarded its conditional transfer provision for senior high school students and transferred all senior high school students who had indicated a desire to transfer to another school. This has resulted in resegregation of West Charlotte High School, the previously all black school, and has substantially reduced the number of students assigned to that school for the 1971-72 school year. Additionally, the board has permitted transfers of students in other grades in a way which has promoted resegregation of schools. The board has also failed to determine the correct addresses of students and has thereby permitted the assignment of many students to schools other than the ones they were to

[3] This order merely restated an earlier requirement with respect to the Board's duty to prevent the creation of all-black or predominantly black schools, approved by this Court. See 311 F.Supp. 265, 268 (W.D.N.C. 1970).

> attend under the Board's proposed Feeder plan. This is [sic] further tended to resegregate the schools.
>
> [and]
>
> Since the Court's June 29, 1971 order, the board has made numerous changes in the proposed Feeder Plan it previously submitted to the Court. The board has not filed copies of these changes with the court or served copies of same upon counsel for the plaintiffs. (pp. 2-3)

After a hearing conducted on September 22, 1971 with respect to these allegations, the court found on October 21, 1971, that "several highly specific official actions of the school board itself since the April, 1971 decision of the Supreme Court have added new official pressures which tend to restore segregation in certain schools." 334 F.Supp. 623, at 628 (W.D.N.C. 1971). It identified these pressures as stemming from 1) the construction program (use and location of mobile units), 2) the under population and proposed closing of formerly black schools, and 3) several recent decisions about pupil assignments and transfers. The court pointed out that the current plan contemplated the use of 232 mobile units, primarily at suburban schools remote from the black community, that black schools were being operated at considerably less than capacity, that low- and middle-income white children were being assigned to and wealthier white children removed from formerly black schools and that the Board had allowed numbers of white children to abandon and black children to return to formerly black schools in violation of existing court orders. *Id.* at 628. The court indicated moreover that:

> With that history in view, it is necessary to inquire into the board's present plan or program for dealing

with foreseeable problems of re-segregation in response to the pressures which have been mentioned in this order. If the board has a program or policy to deal with the results of these pressures, the schools can nevertheless be operated in compliance with the law. If it has no plan, many of the schools are likely to re-segregate.

There is no such plan and no such program.

On the issue of "resegregation" of certain formerly all-black elementaries under the feeder plan, the court pointed out that this result was caused by the Board's failure to make allowance for the 1,500 westside, low-cost, principally black housing units which were currently being completed or occupied. It concluded:

> Racial discrimination through official action has not ended when a school board knowingly adopts a plan likely to cause a return to segregated schools and then refuses to guard against such resegregation.
>
> It is therefore apparent that although the current plan *as now working* should be approved, the case will have to be kept active for a while longer. *Id.* at 629.

Plaintiffs' motion for further relief was denied by the court.

On November 7, 1972, plaintiffs filed a motion for further relief seeking an order:

> . . . directing the defendants to take immediate steps to eliminate the continued racial identity of West Charlotte Senior High School and continued racial discrimination with respect to professional personnel (p. 1).

On April 2, 1973, plaintiffs filed a motion to add additional parties defendants—new board members and white plaintiffs in a new suit. Plaintiffs alleged that:

> The Board has failed to comply with the Court order. Several schools have now or are becoming resegregated because of the Board's plan and the Board's failure "to adopt and implement a continuing program . . . of assigning pupils . . . for the conscious purpose of maintaining each school . . . in a condition of desegregation."

At a May 8, 1973 hearing, the Board proposed what the court described as a " 'bare minimum' or 'get by' " group of changes. The court suggested that it would be wise for the Board to develop a more comprehensive revision for 1974-75 implementation, and directed that certain changes be made in its plan for 1973-74. On May 18, the Board returned to court with these 1973-74 revision.

In its order of June 19, 1973, the court approved modifications for the 1973-74 academic year but required the Board to prepare by March 1, 1974 a comprehensive plan for "pupil assignment and desegregated school operation" to be implemented at the start of the 1974-75 school year. Though the court found that much genuine progress was promised by current Board proposals, it concluded that they did "not yet satisfy the constitutional requirements of equal protection of the laws (fairness)" and that continuing jurisdiction was still required.

Of particular relevance to the issues in the Pasadena case before the Court is the court's analysis of the relationship between pupil assignments and so-called "white flight" within the Charlotte-Mecklenburg system:

> Defendants proposed to increase the West Charlotte studenty body by transferring to West Charlotte 180 white and 100 black students from the Statesville

Road (North High School) area and 350 white and 125 black students from the Devonshire (Independence High School) area . . .

The problem with the proposal is not with its numerical results, but with its fairness and stability.

• • •

The sore spot may not really be the assignment to a school eight or ten miles away (high school students usually have to travel quite a ways to school); nor, it is to be hoped, is it the educational shortcomings of West Charlotte; West Charlotte is not expected to suffer any deficiency of academic offerings nor extracurricular activities in the future. Rather, the sore spot with the people of Devonshire and elsewhere in the Garinger-North-West Charlotte-Harding area is that people in the southeast part of the county, including many who live closer to West Charlotte High School than Devonshire, are not being required to attend a "black" school at any time during their high school career (nor, as a practical matter, for more than a year or two at any stage of their education). If the assignments were done in fairness instead of in such a way that they effectively re-zone real estate and drastically affect land values, most, but of course not all of the valid objections would be reduced or eliminated.

Significantly, the Pupil Assignment Study (p. 10)[4] reports that "the assignment plan has had greater and more immediate effect on housing in Charlotte than on the schools."

A fair plan would not have such effects.

362 F. Supp. 1223 at 1235-36. (W.D.N.C. 1973).

[4] This study was done in March, 1973 by Board staff.

The Board's appeal of this June 19, 1973 district court opinion and order was dismissed on January 15, 1974 by the Fourth Circuit Court of Appeals, sitting *en banc*. *Swann* v. *Charlotte-Mecklenburg,* 489 F.2d 966 (4th Cir. 1974).[5]

On July 10, 1974, the Board submitted to the court a comprehensive desegregation plan for Charlotte-Mecklenburg schools to be implemented for the 1974-75 academic year. In approving this plan by order of July 30, 1974, the district court remarked as follows:

> Adoption of these new guidelines and policies is understood as a clean break with the essentially "reluctant" attitude which dominated Board actions for many years. The new guidelines and policies appear to reflect a growing community realization that equal protection of laws in public education is the concern of private citizens and local officials and is not the private problem of courts, federal or otherwise. This court welcomes the new guidelines and policies and the new plan, and the declared intention of the new Board to carry them out. If implemented according to their stated principles, they will produce a "unitary" (whatever that is) school system. 379 F. Supp. 1102, 1103 (W.D.N.C. 1974).

The court noted that the comprehensive plan would include the following features, among others (1104-05):

1) Transfer policies and procedures for the purpose of maintaining an integrated school system with a stable assignment program;

[5] On December 10, 1973, the district court enjoined certain white parents from prosecuting a state action which challenged the Board's decision to increase black participation in a program for talented students. The Court of Appeals affirmed this ruling on July 23, 1974. *Swann* v. *Charlotte-Mecklenburg Board of Education,* 501 F.2d 383 (4th Cir. 1974).

2) Distances of bus travel have been somewhat reduced; years of bussing for many children have been reduced; and the burdens of bussing have been more equally, though of course not perfectly, redistributed;

3) Monitoring procedures to prevent adverse trends in racial make-up of schools are promised; and

4) School location, construction and closing are to be planned to simplify rather than to complicate desegregation.[6]

On July 11, 1975, the United States District Court for the Western District of North Carolina closed its files on *Swann* v. *Charlotte-Mecklenburg Board of Education*, Civil No. 1974, with the following words:

> Dismissal is neither usual nor correct in a case like this where continuing injunctive or mandatory relief has been required. Facts and issues once decided on their merits ought, generally, to remain decided. This case contains many orders of continuing effect, and could be re-opened upon proper showing that those orders are not being observed. The court does not anticipate any action by the defendants to justify a re-opening; does not anticipate any motion by plaintiffs to re-open; and does not intend lightly to grant any such motion if made. This order intends therefore to close the file; to leave the constitutional operation of the schools to the Board, which assumed that burden after the latest election; and to express again a deep appreciation to the Board members, community leaders, school administrators, teachers and parents who have made it possible to end this litigation. (*Slip op.* at 1-2)

[6] In *Swann*, this Court emphasized the important role that school board decisions with respect to construction of new schools and the closing of old ones play in determining whether a system remains desegregated or resegregates. *Id.* at 20.

A copy of this entire "Swan Song," as the district court characterized its final order, is included in Appendix A hereto.

The Charlotte-Mecklenburg experience described above demonstrates several important points about the appropriate nature, extent and duration of federal court supervision of so-called "unitary" systems.[7] First, even the best desegregation plan on paper may require extensive revisions and modifications in practice. An entirely new plan may be necessary where original proposals for desegregation have proved unworkable and ineffective. Second, a desegregation plan will be effective only if the school board wants it to work. Even in the absence of actual bad faith, the oversight of a district court is crucial to ensure that disregard for the segregative consequences of board conduct will not go uncorrected. Third, plans which place the burden of desegregation upon blacks and low- and middle-income whites, while leaving "protectorates" of wealthier whites untouched, have produced resistance, instability and "white flight." "Fair" plans may be expected to have the opposite effect. Fourth, the key to a successful plan, which a court can expect with confidence to effect compliance with *Brown* and *Swann* in the long run without judicial supervision, is a school board that accepts affirmative constitutional responsibility to establish and maintain a desegregated system. Compare the ways in which the court described the two Charlotte-Mecklenburg boards in office between April, 1971 and July, 1975. In passing upon the 1973 Board's proposals for 1973-74, the court remarked:

> Until now, defendants had taken no initiative whatever in coping with problems of desegregation; their

[7] Charlotte-Mecklenburg's history is not unique. In Appendix B, hereto, we have listed from the Legal Defense Fund's docket 31 cases in 12 states where significant litigation occurred after *Swann*. These cases have also either been dismissed or are inactive, subject to montoring through periodic reports filed by affected school boards.

> actions have awaited court orders or instructions, and have been based on minimum interpretation of what compliance would require. 362 F.Supp. 1223, at 1236-37.

In its order dismissing the case, the court referred to the Board now in office in the following manner:

> Since early 1974, the case has been quiet. No new or old issues have been raised by the litigants or decided by the court. The new Board has taken a more positive attitude toward desegregation and has at last openly supported affirmative action to cope with recurrent racial problems in pupil assignment. Though continuing problems remain, as hangovers from previous active discrimination, defendants are actively and intelligently addressing these problems without court intervention. It is time, in the tenor of the previous order, to be "closing the suit as an active matter of litigation . . ."

The lesson of Charlotte-Mecklenburg then, for purposes of this Court's determination of the issues raised in the Pasadena case, is that in moving a segregated school system to unitary status:

> Th attitude or state of mind at the top, among the Board of Education, is far more important than the physical details or logistics of pupil assignment. If that attitude or policy is negative or technical, the children know it and feel it; then "ratios" and "bussing" assume unwanted but unavoidable significance. On the other hand, if the top level attitude or policy is equal treatment for all, the word gets around; hackles fall; litigants and lawyers and courts get easier to please; and the details of pupil assignment become less controversial and more commonplace.

> And the recurrent injury to the spirits and motivation of the children themselves—as well as the unrest among parents—can be alleviated. 379 F.Supp. at 1104.

In Pasadena, the petitioner school board has shown hostility to making desegregation work, a commitment to doing the very minimum to comply with court orders, and a desire to replace the current plan with an approach that offers strong possibilities for resegregating the system. Under such circumstances, the trial and appellate courts were correct in determining that continuing judicial supervision of the Pasadena system was necessary and proper. Until the Pasadena board demonstrates that it has the commitment to make desegregation work, an appraisal the trial court is uniquely qualified to make, *Swann* validates an exercise of discretion which determines that judicial supervision should continue.

CONCLUSION

For the foregoing reasons, the decisions below should be affirmed by this Court.

Respectfully submitted,

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APPENDICES

Appendix A

Final Order of the District Court

(Filed July 11, 1975)

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Charlotte Division

Civil No. 1974

JAMES E. SWANN, *et al.*,

Plaintiffs,

—VS—

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, *et al.*,

Defendants.

FINAL ORDER
(SWANN SONG)

On July 10, 1974, defendants filed a report covering certain changes in the proposed 1974-75 pupil assignment plan, and requested the court to dismiss the suit. On July 30, 1974, the court entered an order approving the revised plan under specified conditions, and expressing appreciation to the Board, the Citizens Advisory Group and the school staff people and others who had worked to make it possible. The order closed with the comment that, after May 1, 1975,

> ". . . assuming and believing that no action by the court will then be required, I look forward with

pleasure to closing the suit as an active matter of litigation . . ."

Since early 1974, the case has been quiet. No new or old issues have been raised by the litigants or decided by the court. The new Board has taken a more positive attitude toward desegregation and has at last openly supported affirmative action to cope with recurrent racial problems in pupil assignment. Though continuing problems remain, as hangovers from previous active discrimination, defendants are actively and intelligently addressing these problems without court intervention. It is time, in the tenor of the previous order, to be "closing the suit as an active matter of litigation . . ."

Dismissal is neither usual nor correct in a case like this where continuing injunctive or mandatory relief has been required. Facts and issues once decided on their merits ought, generally, to remain decided. This case contains many orders of continuing effect, and could be re-opened upon proper showing that those orders are not being observed. The court does not anticipate any action by the defendants to justify a re-opening; does not anticipate any motion by plaintiffs to re-open; and does not intend lightly to grant any such motion if made. This order intends therefore to close the file; to leave the constitutional operation of the schools to the Board, which assumed that burden after the latest election; and to express again a deep appreciation to the Board members, community leaders, school administrators, teachers and parents who have made it possible to end this litigation.

The duty to comply with existing court orders respecting pupil assignment of course remains. So, also, does

the duty to comply with constitutional and other legal requirements respecting other forms of racial discrimination.

Ghosts continue to walk. For example, some perennial critics here and elsewhere are interpreting Professor James Coleman's latest dicta in support of the notion that courts should abandon their duty to apply the law in urban school segregation cases. Coleman is worried about "white flight," they say; school desegregation depends on Coleman; therefore the courts should bow out; *"cessante ratione, cessat ipsa lex,"* they say.

The local School Board members have not followed that siren. Perhaps it is because they realize that this court's orders, starting with the first order of April 23, 1969, are based, not upon the theories of statisticians, but upon the Constitution of the United States, and because they recall and are prepared to follow the law of this case which, as to Coleman, is contained in the order of August 3, 1970 (318 F.Supp. 786, 794, W.D.N.C. 1970), as follows:

> *"The duty to desegregate schools does not depend upon the Coleman report, nor on any particular racial proportion of students* [emphasis from original]. —The essence of the *Brown* decision is that segregation implies inferiority, reduces incentive, reduces morale, reduces opportunity for association and breadth of experience, and that the segregated education itself is inherently unequal. The tests which show the poor performance of segregated children are evidence showing one result of segregation. *Segregation would not become lawful, however, if all children scored equally on the tests."* (Emphasis added.)

Appendix A

I do not anticipate a revival, in the Charlotte-Mecklenburg school system, of this and other questions which have already been exhaustively (and expensively) litigated and definitively answered.

With grateful appreciation to all who have made possible this court's graduation from *Swann*, it is therefore

ORDERED:

1. That this cause be removed from the active docket.
2. That the file be closed.

This 11th day of July, 1975.

/s/ JAMES B. MCMILLAN
James B. McMillan
United States District Judge

Appendix B

ALABAMA

Hereford v. *Huntsville Board of Education*, 504 F.2d 857 (5th Cir. 1974)*—Terminal desegregation plan approved February 19, 1975.

Miller v. *Board of Education of Gadsden*, 482 F.2d 1234 (5th Cir. 1973)—Terminal desegregation plan ordered September 11, 1973.

ARKANSAS

Clark v. *Board of Education of Little Rock*, 449 F.2d 493 (8th Cir. 1971), cert. denied 405 U.S. 936 (1972)—Plaintiffs entered into stipulation barring litigation over plan in force for at least two years from June 28, 1973 and for so long as Board abides by plan implemented for 1973-74 and for future years.

Davis v. *Board of Education of North Little Rock*, 449 F.2d 500 (8th Cir. 1971)—Terminal desegregation plan implemented in 1971-72.

Yarborough v. *Hulbert-West Memphis School Dist. No. 4*, 457 F.2d 333 (8th Cir. 1972)—Terminal desegregation plan ordered February 11, 1972.

FLORIDA

Allen v. *Board of Public Instruction of Broward County*, 432 F.2d 362, *cert. denied* 402 U.S. 952 (1971)—Terminal desegregation plan ordered June 21, 1971.

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* Citations to the latest reported decisions in these cases are included primarily for purposes of identification.

Appendix B

Bradley v. *Board of Public Instruction of Pinellas County,* 431 F.2d 1377, *cert. denied* 402 U.S. 943 (1971)—Terminal desegregation plan ordered January 11, 1972.

Ellis v. *Board of Public Instruction of Orange County,* 465 F.2d 878, *cert. denied* 410 U.S. 966 (1973)—Terminal desegregation plan approved December 30, 1972.

Harvest v. *Board of Public Instruction of Manatee County,* 429 F.2d 414, *cert. denied* 402 U.S. 943 (1971)—Case dismissed from active docket, September 15, 1973; reporting required as to proposed new construction.

Steele v. *Board of Public Instruction of Leon County,* 448 F.2d 767 (5th Cir. 1971)—Terminal plan ordered May 10, 1974, reinstating plan approved January 30, 1970.

Weaver v. *Board of Public Instruction of Brevard County,* 467 F.2d 473, *cert. denied* 410 U.S. 982 (1973)—Terminal plan approved May 15, 1973.

Youngblood v. *Board of Public Instruction of Bay County,* 448 F.2d 770 (5th Cir. 1971)—Terminal plan approved for 1971-72.

GEORGIA

Harrington v. *Colquitt County Bd. of Education,* 460 F.2d 193, *cert. denied* 409 U.S. 915 (1972)—Terminal plan ordered October 27, 1972.

Lockett v. *Board of Education of Muscogee County,* 442 F.2d 1336 (5th Cir. 1971).

LOUISIANA

Celestain v. *Vermillion Parish School Board,* 364 F.Supp. 618 (W.D. La. 1972)—Terminal plan ordered December 30, 1974; case placed on inactive docket for two years.

Appendix B

Gordon v. *Jefferson Davis Parish School Board,* 460 F.2d 1062 (5th Cir. 1972)—Terminal plan ordered for 1972-73.

MISSISSIPPI

Adams v. *Rankin County Board of Education,* 485 F.2d 324, 524 F.2d 928 (5th Cir. 1975).

Bell v. *West Point Municipal Separate School Dist.,* 446 F.2d 1362 (5th Cir. 1971)—Terminal plan ordered August 31, 1971.

Franklin v. *Quitman County Board of Education,* 443 F.2d 909 (5th Cir. 1971).

Henry v. *Clarksdale Municipal Separate School Dist.,* 480 F.2d 583 (5th Cir. 1973).

Singleton v. *Jackson Municipal Separate School Dist.,* 509 F.2d 818 (5th Cir. 1975).

NORTH CAROLINA

Eaton v. *New Hanover County Bd. of Education,* 459 F.2d 684 (4th Cir. 1972)—Terminal plan ordered July 22, 1971.

Wheeler v. *Durham City Bd. of Education,* 521 F.2d 1136 (4th Cir. 1975)—Terminal plan approved August 13, 1975.

OKLAHOMA

Dowell v. *Board of Education of Oklahoma City,* 465 F.2d 1012 (10th Cir. 1972)—Terminal plan ordered February, 1972; modified in part June 3, 1974.

SOUTH CAROLINA

Adams v. *School Dist. No. 5, Orangeburg County,* 444 F.2d 99 (4th Cir. 1971)—Terminal plan ordered July 6, 1971.

Appendix B

Tennessee

Kelley v. *Metropolitan County Board of Educ.*, 463 F.2d 732, *cert. denied*, 409 U.S. 1001 (1972)—Terminal plan implemented 1971-72.

Texas

Flax v. *Potts*, 464 F.2d 865, *cert. denied*, 409 U.S. 1007 (1972)—Terminal plan approved August 23, 1973.

Virginia

Brewer v. *School Bd. of Norfolk*, 456 F.2d 943, *cert. denied*, 406 U.S. 933 (1972).

Downing v. *School Board of Chesapeake*, 455 F.2d 1153 (4th Cir. 1972).

Hart v. *County School Board of Arlington County*, 459 F.2d 981 (4th Cir. 1972)—Terminal plan ordered August 10, 1971.

Thompson v. *School Board of Newport News*, 363 F. Supp. 458 (E.D. Va. 1973)—Terminal plan approved September 11, 1973.